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Dean Aviam Soifer
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2515 Dole Street
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RE: Public statements by UH law school Professor Ken Lawson are
detrimental to criminal defendants pending trial

Dear Dean Soifer:

As a defense attorney representing persons charged with criminal offenses in Hawaii state and federal courts, I am compelled to write about the many public comments made by law school Professor Ken Lawson which disregard the presumption of innocence held by pretrial defendants, tout the prosecution's potential evidence and denigrate criminal defenses offered by the accused and their attorneys. I believe the comments are harmful to the individual defendants pending trial and the justice system as a whole. Further, these comments are inconsistent with a law professor's respect for the fundamental principles of due process of law.

Many of Professor Lawson's public comments share his belief that a particular accused defendant is guilty before any trial is held. This is especially disturbing because Professor Lawson is a Co-director of the Richardson Law School's Innocence Project ("HIP") which seeks to exonerate wrongfully convicted individuals and whose mission is to "reform the justice system to prevent innocent people from being convicted of crimes they didn't commit". See HIP mission statement at: www.hawaiiinnocenceproject.org. If HIP's goal is to prevent innocent people from being convicted, Professor Lawson and the Richardson School of Law by association should not be in the business of publically assigning guilt to a defendant before his or her trial is even held. Indeed, the law school appears to endorse Professor Lawson's public statements by citing Lawson's media comments to readers of the school's website under the heading "In the Media". <https://www.law.hawaii.edu/news-events> Commentary attributing guilt against pretrial defendants by a professor at a publically funded law school does not advance the justice system but serves only to increase a risk of a having a wrongful conviction at trial. It is also unbecoming for a UH law professor to publically prejudice a criminally accused's guilt out of one side of his mouth and then argue from the other side that a person convicted following a trial suffered a wrongful conviction. Public comments made by Professor Lawson in recent

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publicized cases are harmful to defendants whose cases are pending trial and are inconsistent with HIP's stated goal to be "advocates for the prevention of future injustice."

The following are some examples of Professor Lawson's comments made against defendants who have been accused but not convicted of crimes:

Lawson opines that a pretrial defendant's claim of self defense is unjustified: "He may come out with some magic out of his hat, but from what *we know* right now, no, *it's not self defense...*". (emphasis added).
https://www.khon2.com/news/local-news/witnesses-claim-victim-yelled-at-punched-suspect-prior-to-shooting_20180104063900828/901555276

Lawson opines that a pretrial defendant accused of murdering a policeman *is guilty*: "The question becomes, *would the officer be alive, had this guy been in prison? And the obvious answer is yes,*" said Lawson. "When you have a guy who was in prison, and the court says 'OK, you spent 18 months in jail, we'll give you a chance now. Report to your meetings, talk to your probation officer.' And instead he just leaves the island? To the point where they had to capture him and force him through extradition. The question becomes... *why is he out at all?*" (emphasis added).
<https://www.khon2.com/news/local-news/law-expert-questions-why-accused-police-officer-killer-was-free-in-the-first-place/1312289854>

Lawson imputes *guilt* to a *defendant pending trial*; "Ken Lawson, of the University of Hawaii William S. Richardson School of Law, says Kealoha has a history of trying to "convince people to obstruct justice."..."When there's a pending case, you don't mess with witnesses and you don't obstruct justice," said Lawson. "The only question is, *what's going to stop you from tampering with witnesses? And the only answer is jail.*". (emphasis added).
<http://www.hawaiinewsnow.com/story/38810708/ex-police-chiefs-wife-could-have-bond-revoked-legal-experts-say/>

Regarding a defendant's request to continue her trial in order to seek cancer treatment, Lawson was dismissive: "Ken Lawson, of the University of Hawaii Law School, is skeptical of Kealoha's claim. 'I have no idea if she has it or not, but at this point *it's like the boy who cried wolf,*' he said." . (emphasis added).
<http://www.hawaiinewsnow.com/2019/03/01/kealoha-seeks-trial-delay-claiming-cancer-diagnosis/>

Lawson ***presumes defendant's guilt*** before trial in commenting about a murder defendant's case: "Any defense counsel is probably going to file a motion arguing that the client was insane at the time and also a motion arguing whether or not the client was competent,". (emphasis added).
https://www.khon2.com/news/local-news/north-shore-murder-suspects-appear-in-court_20180306071629666/1012640262

Lawson ***presumes pretrial defendant's guilt*** in comments about an alleged violent assault case,. "It should cause an outrage. There's no excuse," said University of Hawaii at Manoa law professor Ken Lawson. "Then the guy can go do it (another violent attack) to somebody else. I mean, come on." Lawson says there's enough evidence to prosecute. "Police should not have released the suspect from custody under the guise that the victim didn't want to press charges. You don't need the victim. You got witnesses, the weapon, and medical documentation showing it was a severe injury. With this axe on the bus, with these witnesses on the bus, with this video tape showing it, on the bus. ***What else do we need to convict the man?***" said Lawson. (emphasis added).
<https://www.khon2.com/news/local-news/-unbelievable-outrage-after-hpd-releases-man-accused-of-striking-bus-rider-in-head-with-hatchet/1695250869>

Lawson comments on ***pretrial defendant's culpability and lack of intelligence*** over possible documentary evidence in a pending criminal case: "When you really think about it, either ***you're the dumbest criminal*** in the world or you're so arrogant that you didn't think that anyone was going to check that you were paying for a hotel for a man that's not your husband. That no one would check that you were paying for airline tickets for a man that's not your husband," says Lawson. (emphasis added).
<https://iris.com/2018/07/11/firefighter-allegedly-lied-to-grand-jury-about-a-fair-with-ex-honolulu-pd-chiefs-wife/>

Lawson opines that government's evidence of motive in a pending trial ***"shocks the conscience"***: "It's really strategic, it's like playing chess," Lawson said. "Trials come down to who can tell the best story with the evidence they can get in. And when you look at the story the government is telling ***with the evidence they have it's very compelling***." "This motion lets you know in detail that ***there was some stuff going on that just shocks the conscience*** and it helps explain why the Kealohas would do something like this. (emphasis added).

<https://www.civilbeat.org/2019/02/so-why-would-anyone-fake-stealing-a-mailbox-the-feds-make-their-case/>

Lawson opines on ***uncharged allegations*** of ticket fixing by a ***pretrial defendant*** that: "Nothing now shocks us," said Ken Lawson, of the University of Hawaii William S. Richardson Law School. "Just covering up a speeding ticket should shock us."

<http://www.hawaiinewsnow.com/2019/02/28/feds-list-another-example-how-ex-deputy-prosecutor-kealoha-covered-up-friends-court-document/>

Lawson comments that arrestee's proffered defense is ***not enough***: "What the law is saying is, he hasn't taken a substantial step to commit a crime yet. So he's in lawful possession of his weapons, in a lawful place, it isn't enough to make the arrest. So then the question comes back to: well, what do you have to wait for? To point the gun at somebody, almost pull the trigger, and then arrest him?" Lawson referenced last year's mass shooting, where Las Vegas gunman Stephen Paddock shot and killed 58 people from his room at the Mandalay Bay. "We see what happened in Las Vegas. Somebody loads up automatic weapons and points it out the window. It's becoming an all too common an occurrence." The case may be handed to the prosecutors office. Lawson says it could be a case that centers around the man's claims he is a federal agent sent to "take out terrorists." "It's really fact sensitive. I think you could argue that, especially in this climate of fear. But ***I still think legally it's not enough***." (emphasis added).

<https://www.khon2.com/news/local-news/man-found-with-multiple-weapons-and-ammunition-in-a-waikiki-hotel-room-may-not-get-arrested/1179446862>

Lawson says uncharged suspect's report of theft of his cell phone and laptop computer is ***suspicious***. Ken Lawson, of the University of Hawaii's William S. Richardson School of Law, says ***the claims are suspicious***. "I mean, It may have happened the way he said, that somehow, after the subpoena came through, 'lo and behold all of my stuff got stolen," Lawson said. Lawson says ***it sounds like a tactic many of his past defendants*** have tried. "When are people going to learn, that this is not the type of case you want to play around with?," Lawson said. (Emphasis added). <http://www.hawaiinewsnow.com/story/38658865/hpd-now-searching-for-missing-evidence-relating-to-federal-public-corruption-investigation/>

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The foregoing examples of Professor Lawson many public comments imputing guilt to unconvicted pretrial defendants and disparaging defense attempts to defend their clients are not just unseemly for a criminal law professor, they also operate to undermine the credibility of the Richardson Law School's Innocence Project itself. If Lawson openly presumes the guilt of pretrial defendants, what then does he really think about those who have been found guilty after trial but seek redress for their wrongful convictions? Additionally, who do those defendants that Lawson publically condemns as guilty turn to in the future for help after they are wrongfully convicted? Certainly not HIP whose Co-director has already publically branded them guilty before their trials. Similarly, in his zeal to publically condemn pretrial defendants, isn't Professor Lawson shrinking the pool of potential HIP client's by branding them guilty before conviction?

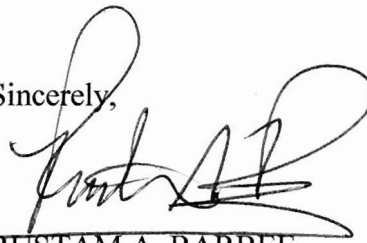
Significantly, a news article from December, 2018, reports that HIP attorneys and Professor Lawson then complained to the Hawaii Attorney General, the Hawaii State Bar Association, the Hawaii Office of Disciplinary Counsel, the Washington state Office of Disciplinary Counsel and Hawaii County Prosecuting Attorney that a retired jurist from Washington state interfered with HIP's ability to represent their convicted murder client by making "claims that we [HIP] have made mistakes in our representation of [the client] ... certainly could damage our relationship with our client and his family... We sincerely believe that if [the retired Judge] continues, a successful outcome of Ian's case, at least from Ian's point of view, will be in jeopardy." See: Hawaii Innocence Project letter asks state AG to 'take action' against retired judge by John Burnett, Hawaii Tribune-Herald, Wednesday, December 19, 2018. <https://www.hawaiitribune-herald.com/2018/12/19/hawaii-news/hawaii-innocence-project-letter-asks-state-ag-to-take-action-against-retired-judge/> So while Professor Lawson and other HIP board members complain about a retired judge interfering in their ability to defend their client, Albert Ian Schweitzer, a convicted murderer, Lawson feels free to publically express his belief in the guilt of unconvicted pretrial defendants and torpedoed their defense theories. As a defense lawyer I can appreciate Professor Lawson's then expressed concern that a retired judge's unsolicited criticism could impede HIP's efforts on behalf of their client, Mr. Schweitzer and diminish the chances of obtaining a successful result for the client. Extrajudicial public comments in the media, especially when made by a well credentialed person such as a retired judge or a criminal law professor can also certainly negatively impact a pretrial defendant's ability to mount a successful defense and win an acquittal. Ironically, If Professor Lawson were asked to comment on the Dana Ireland murder prosecution years ago, he would have publically denounced the defendants as guilty and HIP would not now be representing Mr. Schweitzer due to Lawson's unnecessary creation of a conflict. Because Lawson has now commented on many high profile cases, how is HIP able to represent these defendants later for their wrongful conviction which Lawson and UH are complicit with?

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Finally, Professor Lawson's apparent zeal to convict pretrial defendants in the media may make him popular with the prosecutor offices but clearly does not endear him or the law school with the criminal defense bar. Pandering to public outrage in high profile cases is expected of certain politicians and people who pay "lip service" to the justice system but not of the sole and publically funded law school in Hawaii which presumptively wants its "Innocense Project" to be taken seriously. I believe you will find that the reputation of Professor Lawson, HIP and Richardson Law School will continue to suffer in the face further unwarranted torpedoing of pretrial defendants and their counsel.

In closing, I request that Professor Lawson and others associated with the Hawaii Innocence Project and Richardson School of Law refrain from public comment opining on the guilt of pretrial defendants and the viability of their defenses. If Professor Lawson cannot refrain from publically attacking pretrial defendants, he should be fired and his position awarded to someone else more deserving and representative of providing criminal defense services. The Hawaii Innocence Project its directors, professors and Richardson Law School should all be reaching out to the criminal defense bar for assistance, expertise and referral of cases of wrongfully convicted defendants instead of proclaiming the guilt of our pretrial defendant clients.

Sincerely,



RUSTAM A. BARBEE

cc: Hawaii Association of Criminal Defense Attorneys